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SUBJECT: EU COUNCIL AGREES ON "ROME II" REGULATION

REF: USEU BRUSSELS 592

SUMMARY

1. EU Justice and Home Affairs Ministers (JHA Council) on April 28 agreed on rules intended to ensure that courts in all EU member states apply the same law in the event of cross-border disputes on non-contractual obligations (Rome II). The Council also reached consensus on a Framework Decision on the fight against organized crime but recorded persisting differences on the establishment of a European Evidence Warrant (EEW) for obtaining objects, documents and data for use in proceedings in criminal matters. Visa, asylum and immigration issues debated at the Council meeting have been reported SEPTEL. Full text of Council conclusions has been transmitted to EUR/ERA. END SUMMARY.

LAW APPLICABLE TO NON-CONTRACTUAL OBLIGATIONS

2. EU ministers reached a political agreement (by qualified-majority voting, with Estonia and Latvia voicing reservations) on a draft Regulation intended to ensure that courts in all EU member states apply the same law in the event of cross-border disputes on non-contractual obligations ("Rome II" Regulation). The provisional deal, hailed by Commission Vice-President Frattini as ensuring greater legal certainty for EU citizens and companies, was reached after lengthy discussions over technicalities during which Austrian Justice Minister/Council Chair Prokop spared no effort to rally the Council behind a Presidency compromise.

3. Generally, the applicable law will be the law applicable to non-criminal offences in the country where the damage occurs, "irrespective of the country in which the event giving rise to the damage occurred and irrespective of the country or countries in which the indirect consequences of that event occur," according to Council conclusions. However, several provisions allow for derogations to this general rule and the draft "still gives the parties the option to select the law to be applied to their obligation." Specific rules are also laid down for some non-contractual obligations, such as damage caused by a defective product, damage to the environment, and industrial action:

- With respect to damages caused by defective products, "the general rule is that the law applicable is the law of the country where the person who sustained the damage is habitually resident";
- In the event of violation of the environment, "the law applicable shall be the law of the country where the damage arises unless the victim chooses to select the law of the place where the event giving rise to the damage occurred";
- Regarding industrial action, "the law applicable to a non-contractual obligation in respect of the liability of a person in the capacity of a worker or an employer or the organizations representing their professional interests for damages caused by an industrial action, pending or carried out, shall be the law of the country where the action is to be or has been taken."

4. In exceptional circumstances, the Commission will allow member states to negotiate and sign international agreements with countries outside the EU.

5. Member states had been negotiating this proposal for three years. Discussions had long been focused on the issue of media libeling, which was finally excluded from the draft. In case of media defamation, the applicable law will continue to depend on where the case is brought to justice. No later than four years after the Regulation enters

into force, the Commission shall report on the issue of the law applicable to non-contractual obligations arising out of traffic incidents and out of violations of privacy and rights relating to personality, including libeling. The report will be complemented by proposals to adapt the Regulation, if necessary.

#### FIGHT AGAINST ORGANIZED CRIME

16. Pending the lifting of some parliamentary and scrutiny reservations in the member states, the Council reached a consensus on a Framework Decision on the fight against organized crime. According to the Council conclusions, "for the purposes of this Framework Decision, 'criminal organization' means a structured association, established over a period of time, of more than two persons, acting in concert with a view to committing offences which are punishable by deprivation of liberty or a detention order of a maximum of at least four years or a more serious penalty in order to obtain, directly or indirectly, a financial or other material benefit. Concerning the offences relating to participation in a criminal organization, each member state shall take the necessary measures to ensure that either the types of conduct related to a criminal organization described in (a) or the type of conduct described in (b) are regarded as offences:

- (a) conduct by any person who, with intent and with knowledge of either the aim and general activity of the organization or its intention to commit the offences in question, actively takes part in the organization's criminal activities, including the provision of information or material means, the recruitment of new members and all forms of financing of its activities, knowing that such participation will contribute to the achievement of the organization's criminal activities;
- (b) conduct by any person consisting in an agreement with one or more persons that an activity should be pursued, which if carried out, would amount to the commission of offences falling within the Framework Decision, even if that person does not take part in the actual execution of the activity.

17. Regarding penalties, each member state shall take the necessary measures to ensure that the offence referred to in (a) is punishable by a maximum term of imprisonment of at least between two and five years; or that the offence referred to in (b) is punishable by the same maximum term of imprisonment as the offence at which the agreement is aimed, or by a maximum term of imprisonment of at least between two and five years.

#### EUROPEAN EVIDENCE WARRANT

18. Ministers failed again to make substantial progress on a draft Framework Decision to establish a European evidence warrant (EEW) for obtaining objects, documents and data for use in proceedings in criminal matters (REFTEL). The draft, which is based on the same approach to mutual recognition as the European arrest warrant, using the same 32 offences, continues to be resisted by Germany, which invokes constitutional differences on the dual criminality requirement. Germany called for the introduction of legally binding criteria defining 6 of these 32 offences. The other delegations and the Commission could not agree to that, but could only accept the inclusion of criteria of an advisory nature. The matter was referred to Council working bodies with a view to exploring possibilities for a compromise. Officials were also tasked to examine if the draft could cover telecom and electronic data.

#### SURRENDER PROCEDURE WITH ICELAND AND NORWAY

19. Pending the lifting of some parliamentary reservations, the Council reached an agreement on a surrender procedure between the EU member states and Iceland and Norway.

#### MISCELLANEOUS

10. Among other issues:

- The Presidency reported about the "High Level

Dialogue on the Fight against Terrorism," the first meeting of which is scheduled for May 10, 2006. Participants will include Austrian Minister Prokop, EU CT Coordinator de Vries, and Commission Vice-President Frattini. Items for discussion will be the EU Strategy and Action Plan on terrorism; the EU Strategy and Action plan on Radicalization and Recruitment; and the UN Strategy and role in the fight against terrorism;

- Over lunch, Frattini updated ministers on the work of the European Parliament Temporary Committee on Allegations concerning the use of European countries by the CIA for the transportation and illegal detention of prisoners. Frattini invited ministers to keep cooperating with the EP;
- The Council approved a Recommendation on the drawing up of agreements between EU police, customs and other specialized law enforcement services in relation to the prevention and combating of crime.
- The Council agreed to a draft Decision on the accession of the European Community to the Hague Conference on private international law (HCCH) that will be sent to the European Parliament for its assent;
- The Council adopted a Regulation amending the lists of insolvency proceedings, winding-up proceedings and liquidators contained in a 2000 Regulation on insolvency proceedings;
- The Council agreed on the general framework of a future strategy for the external dimension of judicial cooperation in civil matters.
- The Presidency formally opened the "N-Lex" data base intended to make it possible for every citizen to consult the national legislation of member states online. Free-of-charge access will not be limited to national law linked to Community law but may include all areas of law. The system, which will remain experimental for some time, currently covers the access to legislative databases of 22 member states. With a view to overcoming linguistic barriers, the thesaurus used for the indexation of European legislative acts ("Eurovoc") has been integrated in the system as a dictionary so that users will be able to search for terms in a foreign language.

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